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(2008) 09 GAU CK 0057

In the Gauhati High Court

Case No : Writ Petition (C) No. 2059 of 2007

Sri. Monoranjan Banerjee and Others — APPELLANT

Vs

Smt. Bipasa Bose and Others — RESPONDENT

Date of Decision : 09-09-2008

Acts Referred:
Assam Land and Revenue Regulation, 1886 — Regulation 147, 151
Assam Non-Agricultural Urban Areas Tenancy Act, 1955 — Section 5(1)(a)

Citation : (2009) 1 GLD 400 : (2008) GLT 710 Supp

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : N. Dutta, P.K. Roy Chaudhury, Aslam Khan, Joy Das and N.G. Kundu, for the Appellant; B.K. Goswami P.K. Kalita, R.K. Baruah and G.J. Saikia, for the Respondent

Final Decision : Allowed

Judgement

B.K. Sharma, J.—This writ petition is directed against the order passed by the Assam Board of Revenue granting mutation in favour of the Respondents and thereby upholding the order of mutation passed by the Additional Deputy Commissioner.

2. The land measuring 4 Kathas 3 lechas which is a part of land of 1 Bigha 1 Katha 5 lechas covered by Dag No. 811 (Old)/1301 (New) of KP Patta No. 108/621, 478(01d)/478 (New) of Sahar Guwahati, Part-II, Mouza Guwahati belonged to Late Kunja Bihari Banerjee, the predecessor in interest of the present Petitioners.

3. Kunja Bihari died in the year 1941 and on his death the aforesaid land alongwith other properties devolved upon the Petitioners and accordingly their names have been mutated as pattadars in the land and patta has been issued in their names as per the last re-settlement operation. The Petitioners have been paying the land revenue regularly.

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4. During the lifetime of Kunja Bihari, he granted lease of the said entire land in the year 1951 in favour of one Suresh Chandra Dutta (since deceased). A registered Kabuliyat was executed by said Sri Dutta in favour of Kunja Bihari on 1.3.1931, agreeing to occupy the said land as tenant for a period of 10 years and accordingly he continued to occupy the said land till the year 1941.

5. Sri Suresh Chandra Dutta transferred his leasehold right over the land of 2 kathas 2 lechas out of the aforesaid entire land in favour of Prof. Jadulal Mukharjee, who became a lessee under Kunja Bihari and Sri Dutta continued to occupy as the lessee the remaining portion of the land measuring 4 kathas 3 lechas. Sri Dutta conveyed his leasehold interest of the land measuring 4 kathas 3 lechas together with structures standing thereon in favour of one Sri Suresh Sen in the year 1949.

6. Said Sri Suresh Sen transferred his leasehold right of the land alongwith structures to one Sri Sudhir Ranjan Bose, the predecessor in interest of the present Respondents who continued to possess the said land as tenants under the Petitioners.

7. One Sri Bireswar Banerjee, the predecessor in interest of the Petitioners No. 9 and 10 alongwith the other Petitioners filed the Title Suit No. 182/1960 against said Sudhir Ranjan Bose, the predecessor in interest of the Respondents No. 1 to 4 for his ejectment from the said land measuring 4 kathas 3 lechas. The suit ended in SA No. 51/1967 wherein this Court held that Sri Sudhir Ranjan Bose''s status was a tenant under the Petitioners in respect of the said land.

8. According to the Petitioners, the Respondents suppressing all the aforementioned facts illegally instituted Mutation Case No. 217/2001-02 before the Circle Officer, Guwahati Revenue Circle behind the back of the Petitioners claiming mutation of their names in respect of the said land measuring 4 kathas 3 lechas by right of purchase and inheritance. In the proceeding, the order for mutation Was passed on 7.3.2002, which according to the Petitioners, the Respondents obtained in collusion with the officia''s of the Circle Office, Guwahati Revenue Circle and without serving any notice on the Petitioners.

9. When the Petitioners came to know about the aforesaid order dated 7.3.2002 only in the month of June, 2004, they immediately filed an application in KRC Case No. 44/2004-01, which was started on detection of anomalies in the order dated 7.3.2002. By the said application, the Petitioners prayed for impleading them as parties and then to hear them.

10. The matter was fixed on 17.1.204 and though the Petitioners, through their engaged Advocate filed document of title, land revenue paying receipts etc. in respect of the land, the matter was adjourned to 26.7.2004, on which date, the Circle Officer upheld the earlier order dated 7.3.2002 being-aggrieved, by the order dated 7.3.2002 upheld by order dated 26.7.2004, the Petitioners preferred R.A. No. 17/2004-05 before the Deputy Commissioner, Kamrup (M). The matter was heard by the Additional Deputy Commissioner, Kamrup (M) and passed the

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order dated 30.6.2005 granting mutation in favour of the Respondents.

11. After the aforesaid order passed by the Additional Deputy Commissioner, the Petitioners approached the Assam Board of Revenue by way of filing an appeal under Regulation 147 read with 151 of the Assam Land and Revenue Regulation making a grievance against the same. The appeal was registered and numbered as Case No. 177 RA (K)/05. The appeal having been dismissed by order dated 27.10.2006 and thereby upholding the order passed by the Additional Deputy Commissioner, the Petitioners have filed the instant writ petition.

12. The case of the Respondents is that, their predecessor in interest Late Sudhir Ranjan Bose purchased the plot of land measuring 11.10 Ares from Sri Suresh Chandra Sen. Sudhir Ranjan Bose and on his death the Respondents being the successors claimed their mutation by right of inheritance in the said plot of land. During the pendency of the appeal before the Assam Board of Revenue, Smt. Tapashi Bose, wife of Late Sudhir Ranjan Bose expired on 18.6.2006 and the Respondents herein being her daughters stepped into her shoes.

13. According to the Petitioners the impugned orders are per se illegal inasmuch as mere right of tenancy cannot confer any right on the Respondents to get their name mutated in respect of the land. In this connection, the Petitioners have referred to the findings of this Court in the aforementioned S.A. No. 51/1967, by which it was observed that the predecessor in interest of the Respondents Late Sudhir Ranjan Bose was a tenant under the Plaintiffs. In the said judgment reported in (1973) ALR 16 (Bireswar Banerjee and Ors. v. Sudhir Ranjan Bose and others), it was observed that the predecessor in interest of the Respondents was a tenant within the meaning of Section 3(g) and he was also entitled to protection u/s 5(1)(a) of the Assam Non-Agricultural Urban Areas Tenancy Act, 1955.

14. In the counter affidavit filed by the Respondents, the aforesaid fact of the predecessor in interest of the Respondents being tenant within the meaning of the provisions of the Act has been admitted. However, it is their stand that nowhere in the Act there is any prohibition that a tenant cannot get his name mutated over the land. It is their case that they being in possession of the land after lawfully acquiring the leasehold right are protected u/s 5 of the Act and consequently are also entitled to get their names mutated.

15. I have heard Mr. P.K. Roy Choudhury, learned Counsel for Petitioners as well as Mr. B.K. Goswami, learned senior counsel assisted by Mr. RK. Kalita, learned Counsel for the Respondents. I have also heard Ms. R. Chakraborty, learned Additional Sr. Govt. Advocate. While Mr. Roy Choudhury, learned Counsel for the Petitioners submitted that the Respondents being tenants under leasehold right cannot become pattadars and/or get their names mutated, Mr. B.K. Goswami, learned Counsel representing the Respondents submitted that since the Respondents are entitled to protection from eviction from the land, there is nothing wrong in mutating their names. He submitted that mere inclusion of

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name in the patta, the Respondents will not become the owners of the land, but such inclusion will be a notice to probable purchaser of the land that the Respondents are not evictable from the land in view of the protection of them under the provisions of the Act. During the course of hearing he even made the concession that the Respondents would not object to any modification to that extent in respect of the order of mutation.

16. The Assam Non-Agricultural Urban Areas Tenancy Act, 1955 is an act to regulate in certain respects the relationship between landlord and tenant in respect of non-agricultural land in the urban areas of the State of Assam. Section 3(g) defines tenant as a person who holds land under another person, other than Government and who is, but for a special contract, liable to pay rent for that land to the latter, and include a person who derives his title from a tenant, and a person who continues in possession of any land after termination of his tenancy in respect of that land.

17. Section 5 of the Act provides protection to such tenant from eviction, which reads as follows:

5. Protection from eviction.(1) Notwithstanding anything in any contract or in any law for the time being in force-

(a) where under the terms of a contract entered into between a landlord and his tenant whether before or after the commencement of this Act, a tenant is entitled to build, and has in pursuance of such terms actually built within the period of five years from the date of such contract, a permanent structure on the land of the tenancy for residential or business'' purposes, or where a tenant not being so entitled to build, has actually built any such structure oft the land of the tenancy for any of the purposes aforesaid with the knowledge and acquiescence of the landlord, the tenant shall not be ejected by the landlord from the tenancy except on the. ground of non-payment of rent;

Provided that where the tenant having built a permanent structure within the period specified above and for any of the purposes mentioned therein, renews the tenancy on expiration of the original contract he shall always be deemed to have built such permanent structure within the period of five years from the date of the renewed contract:

Provided further that a person having a right, title and interest over a permanent structure by whatever mode of acquisition he may have taken the tenancy from the landlord of the land wherein the said structure stand, shall not be ejected except on the ground of non-payment of rent.

(b) where a tenant has effected improvements on the land of the tenancy under the terms whereof he is not entitled to effect such improvements, the tenant shall not be ejected by the landlord from the land of the tenancy unless compensation for reasonable improvements has been paid to the tenant. (2) No tenant shall be ejected by his landlord from the land of the tenancy except in

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execution of a decree for ejectment passed by a competent Civil Court.

(Z) No decree for ejectment passed on the ground of non-payment of rent shall be executed within a period of thirty days from the date of the decree and if the tenant pays into the Court whose duty it is to execute the decree the entire amount payable under the decree within the aforesaid period the Court shall record the decree as satisfied.

18. As per the aforesaid provision, a tenant on fulfilling the conditions precedent cannot be ejected from the land except on the ground of non-payment of rent. Further, no tenant shall be ejected by his landlord from the land of the tenancy except in execution of a decree for ejectment passed by a competent Civil Court. The fact that the predecessor in interest, of the Respondents was a tenant under the predecessor in interest of the Petitioners is an admitted one. However, it is the case of the Respondents that since they are protected from ejectment, there is nothing wrong in mutating their names in respect of the land. According to them, there being nothing in the Act debarring such mutation, the impugned orders have been rightly passed.

19. In the aforesaid decision in Bireswar Banerjee, the fact that the predecessor in interest of the Respondents was a tenant with the right of protection as envisaged u/s 5(1)(a) of the Act finds mention. Thus, the question which arises for consideration is as to whether the Respondents can get their names mutated as pattadars alongwith the landlord. From the materials on record, it is clear that since 2.3.31 onwards Kunja Bihari and after his death his successors including the present Petitioners have no possession over the land in question, but it is the Respondents, who have been possessing the land since a long time. It is in this context, Mr. Goswami, learned Counsel for the Respondents submitted that the mutation of the names of the Respondents or inclusion of their names as pattadars being not to the exclusion of the names of the landlords and/or by way of substituting their names, the Petitioners need not be apprehensive. He even conceded that if the names of the Respondents are specifically mentioned as tenants under the provisions of the aforesaid Act of 1955, the Respondents will have no objection.

20. In view of the above, this writ petition is disposed of providing that the impugned orders pertaining to mutation of the names of the Respondents in respect of the land shall be only to the extent of incorporation of their names in the patta as tenant under the landlord, which will be sufficient notice to the probable purchaser(s) of the land about the tenancy under the Act of 1955. Such incorporation of the names of the Respondents shall not be on the same footing like that of the landlord pattadars and/or to the exclusion of the landlord pattadars and/or to their substitution.

21. While providing the above, it is placed on record that Section 5 of the Act of 1955 does not bring the tenants to the fold of the landlords, more so, when such tenancy is not unqualified and a tenant can be evicted on account of non-

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payment of rent. The impugned order will have no effect on the right of the Petitioners as the landlord in respect of the land and the inclusion the names of the Respondents in the patta and/or mutation of their names will be only to the extent of their protection u/s 5 of the Act as the tenants which will also serve as a notice to the probable purchaser(s) of the land that the land is under occupation of protected tenant u/s 5 of the Act.

22. The impugned orders of mutation stand modified to the above extent.

23. Writ petition is disposed of in terms of the above order. There shall be no order as to costs.

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